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REMARKS

Claims 1-57 are pending in the subject application. Claims 1, 2, 19, 20, 30, 49, 53, and 57 are amended and claims 6, 18, and 50 are canceled, without prejudice. Applicants submit that the amendments herein introduce no new matter, support therefore being found throughout the application and drawings as originally filed.

The Applicants appreciate the Examiner's thorough examination of the subject application and request reconsideration based on the amendments and the following remarks.

All of the claims stand rejected under 35 U.S.C. §§102 and 103 in view of U.S. Patent No. 6,336,917 to Berke (hereinafter Berke). Applicants respectfully traverse these rejections.

Claims 1 and 2, as amended, recite a device for the delivery of a substance to the eye (claim 1) and a device for the delivery of an artificial tears or demulcent composition to the eye (claim 2) comprising a housing for holding the substance and a non-aerosol, non-electric delivery mechanism. The delivery mechanism comprises a tubular member disposed within the housing, an actuation mechanism positioned at the top of the housing, and at least one outlet port in the actuation mechanism in communication with the tubular member, wherein the delivery mechanism is configured such that the substance is delivered from the housing, through the tubular member, through the outlet port, and to the eye in the form of a spray or mist.

Amended claim 57 is similar and recites a device for treating the eye comprising a housing holding one or more substances and being free of propellant and a non-aerosol, non-electric delivery mechanism comprising a tubular member disposed within the housing and at least one outlet port in communication with the tubular member, wherein the delivery mechanism is configured such that the substance is delivered to the eye via the tubular member and outlet port in the form of a spray or mist.

Applicants respectfully submit that Berke at least does not teach or suggest a device comprising a housing holding one or more substances, a non-aerosol, non-electric delivery

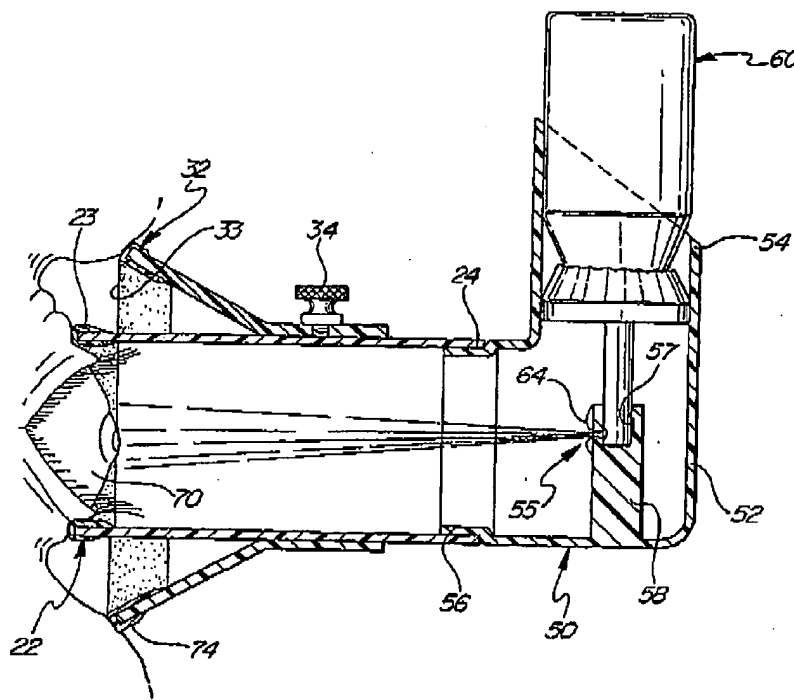
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mechanism comprising a tubular member disposed within the housing and in communication with an outlet port, the outlet port disposed in an actuation mechanism positioned at the top of the housing, the device configured such that the substance is delivered through the tubular member and outlet port to the eye in the form of a spray or mist.

Berke describes a medicine dispenser that is "similar to an inhaler used by asthmatics in that it dispenses a metered spray of medication or fluid by applying pressure to a medicine vial disposed within the dispenser" (col. 3, lines 57-61). Berke's device comprises a dispenser 50 having a first end 54 and a second end 56 at substantially right angles to each other, wherein the first end 54 receives a vial 60 of medicine in an inverted position with the dispenser (nozzle) pointing downwards (see col. 6, lines 10-36; Fig. 4). To deliver medication from Berke's device, a downward pressure is applied to the vial 60 to depress the nozzle into the vial 60, which releases a metered amount of medicine (see col. 6, lines 38-45). Figure 4, which shows Berke's device, is reproduced below:

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It is clear when viewing Berke's device configuration and the description of its use, that Berke's device could not possibly function so as to deliver contents of the inverted vial 60 through the downwardly extending nozzle in the form of a spray or mist the absence of the use of a preopellant or without the use of an aerosol or electric delivery mechanism. Still further, nowhere does Berke teach or suggest a device comprising a tubular member disposed within a housing and in communication with an outlet port positioned within an actuation mechanism at the top of the housing and configured such that the substance is delivered through the tubular member and outlet port to the eye in the form of a spray or mist.

Thus, it is respectfully submitted that claims 1, 2, 57, and all claims dependent therefrom, are patentable over Berke. Reconsideration and withdrawal of the rejections is respectfully requested.

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Applicants further recite, in amended claim 49, a method for the delivery of a substance to the ocular surface of a patient comprising providing a non-aerosol, non-electric delivery device housing the substance and comprising a housing, a tubular member disposed within the housing, an actuation mechanism positioned at the top of the housing, and at least one outlet port in the actuation mechanism in communication with the tubular member; positioning the patient's head such that the line of sight is in a generally horizontal direction; positioning device in front of the eye in the line of sight with the housing in an upright position with the actuation mechanism and outlet port positioned at the top of the housing; and delivering the substance to the eye as a spray or mist in a generally horizontal direction.

As set forth above, Berke at least does not teach or suggest providing a non-aerosol, non-electric delivery device housing a substance and comprising a housing, a tubular member disposed within the housing, an actuation mechanism positioned at the top of the housing, and at least one outlet port in the actuation mechanism in communication with the tubular member. Further, nowhere does Berke teach or suggest a method wherein the device is positioned in front of the eye in the line of sight with the housing in an upright position with the actuation mechanism positioned and outlet port at the top of the housing, and wherein the substance is delivered to the eye as a spray or mist in a generally horizontal direction.

Thus, claim 49 is also patentable over Berke. Reconsideration and withdrawal of the rejections is respectfully requested.

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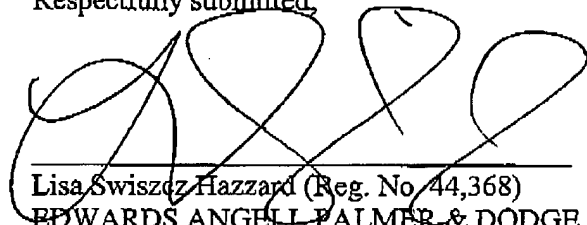
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CONCLUSION

In view of the foregoing, applicant respectfully requests reconsideration, withdrawal of all grounds of rejection and objection, and allowance of claims 1-5, 7-17, 19-49, and 51-56 in due course. The Examiner is invited to contact applicant's undersigned representative by telephone at the number listed below to discuss any outstanding issues.

Respectfully submitted,



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